

## INTERGOVERNMENTAL AGREEMENT BETWEEN

Coconino County  
and  
City of Flagstaff for Housing Rehabilitation Services

This Intergovernmental Agreement ("Agreement") is made this \_\_\_\_ day of \_\_\_\_\_, 2014, by and between COCONINO COUNTY, a political subdivision of the State of Arizona, of 219 East Cherry Avenue, Flagstaff, Arizona ("County" or "Recipient") and the CITY OF FLAGSTAFF, an Arizona municipal corporation with offices at 211 W. Aspen Avenue, Flagstaff, Arizona ("City" or "Subrecipient") to authorize the City Community Development Division to administer the County's Rehabilitation Program in partnership with the County's Community Services Department.

**WHEREAS**, the County is applying for Community Development Block Grant (CDBG) and HOME funds through the Arizona Department of Housing to be used for Owner Occupied Housing Rehabilitation (OOHR) throughout the County, outside of the City of Flagstaff limits; and

**WHEREAS**, the City currently administers the OOHR Program for the City, within city limits; and

**WHEREAS**, the City is willing to be a subrecipient of the federal, state or local grants obtained by the County (the "Grants"); and

**WHEREAS**, the County and the City, desire to participate jointly in activities involved in completing Grant funded OOHR (the "Program").

**NOW THEREFORE**, pursuant to A.R. S. § 11-952, authorizing contracts between public agencies for services or the joint exercise of powers common to both, and A.R.S. §36-1422 which allows cities and counties to cooperate with each other for the purpose of constructing or contracting with respect to housing projects, and the inherent powers of each party to protect the health and welfare of its constituents, for and in consideration of the mutual obligations and covenants set forth herein, the parties agree as follows:

### **I. DURATION; TERMINATION.**

This Agreement shall be effective on the date first set forth above and shall continue in force and effect for a period of six (6) years and upon mutual consent of the parties, duration of this Agreement may be extended for two additional one year terms. The City Community Development Director and the County Community Services Department Manager may consent on behalf of the respective parties for the purpose of extending this Agreement consistent with the language above.

This Agreement may be terminated by either party upon thirty (30) days written notice of termination delivered to the other party. Either party may terminate this Agreement if sufficient funding is no longer available to carry out that party's responsibilities under this Agreement. This Agreement may be terminated by either party without penalty or further obligation, except those mandated by the Grants

and in accordance with the provisions of Arizona Revised Statutes § 38-511 (F), in the event of the occurrence of any of the circumstances described in A.R.S. § 38-511 (A).

## **II. SCOPE OF WORK, FUNDING; AND FINANCIAL RESPONSIBILITIES**

### **1. Scope of Work:**

A. The City shall provide the services for the County as approved in the Grant application and Grant agreement and act as a subrecipient of all Grant funds.

B. Coconino County and City of Flagstaff shall be responsible as follows:

1. Coconino County will:

1.1 Apply for the Grants after submitting applications for the Grants to the City for review and comment.

1.2 Serve as the fiscal agent for the Grants. Remain accountable to Grant providers for proper administration of grant funds, including any claw back of funds. Evaluate the City to determine if there is risk that the City will not comply with Federal statutes, regulations, and the terms and conditions of the subaward for purposes of determining the appropriate subrecipient monitoring including the factors listed in 2 CFR §200.331(b)(1-4).

1.3 As required by federal regulation: Clearly identify every subaward to the City as a subaward and include the following information at the time of the subaward and include any changes in subsequent subaward modifications. When the information is not available, the County must provide the best information available to describe the Federal award and subaward:

A) Federal Award identification;

- a. Subrecipient name (which must match registered name in DUNS);
- b. Subrecipient's DUNS number;
- c. Federal Award Identification Number (FAIN);
- d. Federal Award Date;
- e. Subaward Period of Performance Start and End date;
- f. Amount of Federal Funds Obligated by this action;
- g. Total Amount of Federal Funds Obligated to the subrecipient;
- h. Total Amount of the Federal Award;
- i. Federal award project description, as required to be responsive to the Federal Funding Accountability and Transparency Act (FFATA);

- j. Name of Federal awarding agency, pass-through entity, and contact information for awarding official;
  - k. CFDA Number and name; the pass-through entity must identify the dollar amount made available under each Federal award and the CFDA number at time of disbursement;
  - l. Identification of whether the award is R & D; and
  - m. Indirect cost rate for the Federal award (including if the de minimis rate is charged. All requirements imposed by the pass-through entity on the subrecipient so that the Federal award is used in accordance with Federal statutes, regulations, and the terms and conditions of the Federal award.
- B) Any additional requirements that the pass-through entity imposes on the subrecipient in order for the pass through entity to meet its own responsibility to the Federal awarding agency including identification of any required financial and performance reports;
  - C) Any approved federally recognized indirect cost rate negotiated between the subrecipient and the Federal government or, if no such rate exists, either a rate negotiated between the pass-through entity and the subrecipient or a de minimis indirect cost rate as defined in the CFR.
  - D) A requirement that that subrecipient permit the pass-through entity and auditors to have access to the subrecipient's records and financial statements as necessary for the pass-through entity to meet the requirements of 2 CFR §200.331, §§200.300 Statutory and national policy requirements through 200.309 Period of performance, and Subpart F- Audit Requirements; and
  - E) Appropriate terms and conditions concerning closeout of the subaward.
  - F) In addition, County will identify this Agreement number in all correspondence and communications with the City.

#### 1.4

Monitor the Grant Programs, including reviewing financial and programmatic reports provided by the City. Follow-up and ensure that the City takes timely and appropriate action on all deficiencies pertaining to the Federal award detected through audits, on-site reviews and other means. Issue a management decision for audit findings pertaining to the Grants provided to the City from the

County as required by 2 CFR §200.521 Management decision. See also the City's obligation under Section 2.9 below.

- 1.5 Report on progress to Grant providers.
- 1.6 Submit payment requests to Grant providers.
- 1.7 Provide grant funding on a reimbursement basis to the City of Flagstaff for: 1) payment of contracted services on behalf of applicants based on work completed; 2) payment for services provided to the County by the City, including payment for indirect costs, as negotiated with the City before the City accepts administration of the Grant. The County will pay the City of Flagstaff within a reasonable amount of time after the City submits an invoice and the County verifies the invoice.

2. City of Flagstaff shall:

- 2.1 Review Grant applications for the County prior to the County's submission to the Arizona Department of Housing;
- 2.2 City reserves the right to negotiate with County after receiving the notification required by 1.3, and the right to refuse to administer and act as sub recipient of any Grant. Council delegates authority for negotiation and agreement to administer to the City's Deputy Housing Director.
- 2.3 Determine Program eligibility of applicants according to the County's Rehabilitation standards.
- 2.4 Administer the Program including, but not limited to providing regulatory testing and compliance for environmental testing of structures, contractor procurement, construction oversight, and loan processing. The City may use its own procurement procedures if the procurements conform to applicable Federal law. If there is no State law on a particular aspect of procurement, then Federal contract principles will apply.
- 2.5 Maintain funds received under this Agreement in separate ledger accounts and not mix funds with other sources. Manage funds according to applicable Federal regulations for administrative requirements, costs principles, and audits. Maintain adequate business systems to comply with Federal requirements. The business systems that must be maintained are: Financial Management, Procurement, Personnel, Property, and Travel. A system is adequate if it is written, followed consistently (it applies to similar items), and consistently applied (it applies to all sources of funds).
- 2.6 Comply with federal debarment and suspension regulations.
- 2.7 Provide quarterly programmatic reports to the County within five working days of the last day of the month in which services are provided. Use the form provided by the County to submit quarterly programmatic reports. The report shall contain such information as

deemed necessary by the County. If the scope of the project has been fully completed and implemented, and there will be no further updates, then the quarterly programmatic report for the quarter in which the project was completed will be sufficient as the final report. The report should be marked as final and should be inclusive of all necessary and pertinent information regarding the project as deemed necessary by the County. Quarterly programmatic reports shall be submitted to the County until the entire scope of the Program is completed. Notwithstanding anything to the contrary in this Section, the County shall not request, and the City shall not be required to provide, any of the City's confidential or proprietary information in reports provided to the County, including without limitation, any information regarding research collaborators, research plans or any data, results or other information resulting from City's performance of research or any other activities relating thereto.

2.8 Provide as frequently as monthly, but not less than quarterly, requests for reimbursement. Reimbursements shall be submitted with the Reimbursement Form provided by the County. Submit a final reimbursement for expenses received and invoiced prior to the end of the termination of this Agreement no more than forty-five (45) days after the end of the Agreement. Requests for reimbursement received later than the forty-five (45) days after the Agreement termination will not be paid. The final reimbursement request as submitted shall be marked FINAL, and include a copy of the Property Control Form. All reports shall be submitted to the contact person as described in Section IX of this Agreement.

2.9 Have an annual audit conducted in accordance with OMB Circular A-133 ("Audits of States, Local Governments, and Non-profit Organizations"), if the City expends more than five hundred thousand dollars (\$500,000) from Federal awards, in compliance with the Federal Single Audit Act (31 U.S.C. par. 7501-7507), as amended by the Single Audit Act Amendments of 1996 (P.L. 104 to 156). If the City has expended more than five hundred thousand dollars (\$500,000) in Federal funds, a copy of the City's audit report for the previous fiscal year must be submitted to the County for review within thirty (30) days of signing this Agreement.

2.10 During the term of this Agreement, the City shall be monitored periodically by the County, both programmatically and financially, to ensure that the Program's goals, objectives, performance requirements, timelines, milestone completion, budgets, and other related program criteria, are being met. Monitoring will be accomplished through a combination of office-based reviews and onsite monitoring visits. Monitoring can involve aspects of the work involved under this contract including but not limited to the review and analysis of the financial, programmatic, performance, and administrative issues relative to each program, and will identify areas where technical assistance and other support may be needed.

All on-site monitoring shall take place during normal business hours, upon advance written notice, on dates and at times as mutually agreed upon by the County and the City.

2.11 Close out the Grants.

2.12 Perform all obligations required of subrecipients under the Grants.

3. The City of Flagstaff and Coconino County mutually agree:

3.1 To comply with all legal requirements for the Grants and Coconino County's Housing Rehabilitation Program guidelines.

3.2 That the City of Flagstaff and Coconino County will assign designated staff for this Agreement and shall confer at such times as may be mutually agreed to evaluate each housing rehabilitation project to ensure successful completion.

### **III. RECORD RETENTION**

Both parties agree to prepare, retain, and permit each other to inspect all records as deemed necessary for the purpose of carrying out this Agreement. Further, both parties agree to carry out monitoring and evaluation activities as are reasonably necessary and permitted by law and that each will effectively ensure the cooperation of its employees, officials, and governing body in such efforts.

The retention of records for this project shall be in accordance to the City/County, State and Federal requirements. Federal regulations requires the records to be retained for a period of three years from the date of submission of the final expenditure report, or, for Federal awards that are renewed quarterly or annually, from the date of the submission of the quarterly or annual financial report, respectively, as reported to the Federal awarding agency or pass-through entity in the case of a subrecipient. City records retention schedules, however, require record retention for seven years after a successful single audit. Therefore, records must be retained for seven years after the City and County's successful single audit, or per the City's record retention schedule on the date this Agreement expires. Records must be retained longer if a litigation, claim, or audit is started before the expiration of the three year period. Other extensions to the record retention period may apply as specified in 2 CFR §200.333.

### **IV. SUBRECIPIENT'S STATUS**

It is understood and agreed by both parties that the employees of neither party shall be deemed to be an employee of the other party to this Agreement. Moreover, this Agreement shall not be construed as creating any joint employment between the City and County.

### **V. CONFLICT OF INTEREST**

The City and County stipulate that their officers and employees do not have a conflict of interest and further agrees that their officers and employees will not contract for or accept employment for the performance of any work or services with any individual business, corporation, or government unit that would create a conflict of interest in the performance of its obligations pursuant to this Agreement.

### **VI. LAWS**

The County and the City shall each be fully responsible for compliance with all statutes, ordinances, codes, regulations, applicable to the performance of this Agreement. The Parties understand and acknowledge the applicability to it of the Americans with Disabilities Act, the Immigration Reform and Control Act of 1986 and the Drug Free Workplace Act of 1989.

Under the provisions of A.R.S. §41-4401, Parties hereby warrant that each of its Sub Consultants ('Sub Consultants') will comply with, and are contractually obligated to comply with, all Federal Immigration laws and regulations that relate to their employees and A.R.S. §23-214(A) (hereinafter "Consultant Immigration Warranty").

A breach of the Consultant Immigration Warranty shall constitute a material breach of the Agreement and shall subject the Consultant to penalties up to and including terminations of this Agreement at the sole discretion of the County.

The County retains the legal right to inspect the papers of any Consultant or Sub Consultant's employee who works on this Agreement to ensure that the Consultant or any Sub Consultant is complying with the Consultant Immigration Warranty. Consultant agrees to assist the County in regard to any such inspections.

The County may, at its sole discretion, conduct random verification of the employment records of the Consultant and any of the Sub Consultants to ensure compliance with Consultant's Immigration Warranty. Consultant agrees to assist the County in regard to any random verification performed.

Neither the Consultant nor any of the Sub Consultants shall be deemed to have materially breached the Consultant Immigration Warranty if the Consultant or Sub Consultant establishes that it has complied with the employment verification provisions prescribed by sections 274A and 274B of the Federal Immigration and Nationality Act and the E-Verify requirements prescribed by A.R.S. §23-214 (A).

The County and the City agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act and the Federal Water Pollution Control Act as amended. Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency.

## **VII. INSURANCE**

The County and the City shall each maintain sufficient liability insurance to cover each party's respective activities associated with this Agreement.

## **VIII. INDEMNIFICATION**

Except as stated in Section II (1) (B)(1.2), each party (as "Indemnitor") agrees to indemnify, defend and hold harmless the other party (as "Indemnity") for, from and against any and all claims, losses, liability, costs or expenses, including reasonable attorney fees, (hereinafter collectively referred to as ("Claims")) arising out of this Agreement, but only to the extent that such Claims which result in vicarious or derivative liability to the Indemnity are caused by the act, omission, negligence, misconduct, or other fault of the Indemnitor, its officers, officials, agents, employees or volunteers.

#### **IX. NOTICES**

Any notice or other communication required or permitted to be given under this Agreement shall be in writing and sent to the address given below for the party to be notified, or to such other address, notice of which is given in accordance with this Section:

##### **COUNTY:**

Community Services Department  
Attn: Janet K. Regner, Director  
2625 N. King Street  
Flagstaff, AZ 86004

##### **CITY:**

Housing Section  
Attn: Sarah Darr, Deputy Housing Director  
211 W. Aspen Avenue  
Flagstaff, AZ 86001

#### **X. AUTHORITY TO CONTRACT**

Each party represents and warrants that it has full power and authority to enter into this Agreement and perform its obligations hereunder and has taken all required acts or actions necessary to authorize the same.

#### **XI. GOVERNING LAW**

This Agreement shall be governed, interpreted, and enforced in accordance with the laws of the State of Arizona.

#### **XII. DISPUTE RESOLUTION**

Either party shall have the right to litigate any disputes which arise under this Agreement. In the event any action at law or in equity is instituted between the parties in connection with is Agreement, the prevailing party in the action will be entitled to its costs including reasonable attorneys' fees and court costs from the non-prevailing party.

#### **XIII. AGENTS, EMPLOYEES, AND CONTRACTORS**

Agents, employees and contractors hired by a Party to provide services under this Agreement shall be and remain the agents, employees, and contractors of the hiring Party solely, and shall not be considered agents, employees, or contractors of the other Party.



#### **XIV. CONSTRUCTION**

This Agreement shall be construed as a whole and in accordance with its fair meaning. This Agreement shall not be construed for or against either Party.

#### **XV. INTEGRATION; MODIFICATION**

Both parties acknowledge and agree that they have not relied upon any statements, representations, agreements, or warranties, except as expressed in this Agreement, and that this Agreement constitutes the parties' entire Agreement with respect to the matters addressed. All prior or contemporaneous agreements and understandings, oral or written, with respect to such matters are superseded by and merged in this Agreement. This Agreement may be modified or amended only by written agreement signed by or for both parties, and any such modification or amendment will become effective on the date so specified.

#### **XVI. NO ASSIGNMENT; BINDING EFFECT; THIRD PARTY BENEFICIARIES**

This Agreement is not assignable by either party. Any attempt to do so shall render the assignment null and void and the Agreement may be terminated immediately by the non-assigning party. There are no intended third-party beneficiaries to this Agreement.

#### **XVII. SEVERABILITY**

In the event that a court of competent jurisdiction shall hold any part or provision of this Agreement void or if no effect, the remaining provisions of this Agreement shall remain in full force and effect.

#### **XVIII. WAIVER**

No failure to enforce any condition or covenant of this Agreement shall imply or constitute a waiver of the right to insist upon performance of such condition or covenant, or of any other provision hereof, nor shall any waiver by either party of any breach of any one or more conditions or covenants of this Agreement constitute a waiver of any succeeding or other breach of this Agreement.

#### **XIX. HEADINGS**

The headings used in this Agreement are for convenience only and are not intended to alter or affect the meaning of any provision of this Agreement.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the day and year first above written.

COCONINO COUNTY:

CITY OF FLAGSTAFF:

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Mandy Metzger  
Chairwoman, Board of Supervisors

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Jerry Nabours  
Mayor, City of Flagstaff

ATTEST:

ATTEST:

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Clerk of the Board

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City Clerk

APPROVED AS TO FORM:

APPROVED AS TO FORM:

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County Attorney

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City Attorney

REVIEWED BY:

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Janet K. Regner, Director  
Community Services Department